IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 645 OF 2004.

Bhimrao Ramchandra Gaikwad & anr. ... Appellants.

Versus.

Sou.Sonabai Rajaram Gaikwad. ... Respondent.

Shri S.A.Pawar for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 14th August, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellants, who are original Defendants. He submitted that the Respondent has no title to the suit property as she is claiming through a person who was not at all the owner and who was at the highest a tenant in respect of the suit property. It is submitted that the Appellate court could not have confirmed the decree of perpetual injunction passed by the trial Court.

2. I have considered the submissions. In paragraph 7 of the decision of the Appellate Court, it is recorded that the learned Advocate appearing for the Appellants filed a pursis before the Appellate Court and stated that the Appeal was restricted to the point whether the Respondent was in possession of the suit property on the date of institution of the suit. On the basis of the entries in the revenue records as well as the oral and documentary evidence on record, the Appellate Court concurred with the trial Court by accepting that the

Respondent/Plaintiff was in possession of the suit property on the date of institution of the suit. I find from the Judgment of the Appellate Court that the question relating to title of the Respondent was not at all considered and the Appellate Court confirmed the decree only on the ground that the Respondent was in possession of the suit property on the date of institution of the suit.

3. No substantial question of law arises in the Second Appeal and the same is dismissed.

Judge.